

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

*Curcio*

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**FILE:** B-215589.2

**DATE:** December 10, 1984

**MATTER OF:** Wang Laboratories, Inc.--Request for  
Reconsideration

**DIGEST:**

Prior decision is affirmed where protester does not demonstrate that our conclusion that a federal agency had a reasonable basis to issue a brand name only solicitation for computer equipment is legally incorrect.

Wang Laboratories, Inc. (Wang), requests that we reconsider our decision in Wang Laboratories, Inc., B-215589, Sept. 17, 1984, 84-2 C.P.D. ¶ 300. That decision denied Wang's protest against the Small Business Administration's (SBA) use of a brand name only purchase description in invitation for bids (IFB) No. 84-15-CT, issued to procure personal computers.

This Office will reconsider a decision when the person requesting us to do so specifies that the initial decision contains an error of law. See 4 C.F.R. § 21.9(a) (1984). ✓ Wang asserts that in our initial decision, we erroneously concluded that the Federal Information Resources Management Regulations (FIRMR), 41 C.F.R. § 1-4.11 (1984), rather than ✓ the Federal Procurement Regulations (FPR), 41 C.F.R. part 10 (1984), applied to this procurement for automatic data processing equipment. In this regard, Wang states that pursuant to FIRMR, 49 Fed. Reg. 20993, 21001, May 17, 1984 ✓ (to be codified at 41 C.F.R. § 201-1.601), and FIRMR 41 C.F.R. § 1-4.1109.1 (1984), the FPR's are to be used with the FIRMR unless FIRMR, 41 C.F.R. § 1-4.11, provides otherwise. Wang contends that the FIRMR is silent on the standards which justify issuing a brand name only solicitation and, therefore, that the standards of the FPR, part 10, apply.

We disagree with Wang's analysis since FIRMR, 41 ✓ C.F.R. § 1-4.1102-17, provides that a specific make and model description may be used where that is the only description which adequately expresses the government's requirements.

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Wang disputes as legally incorrect our conclusion that the SBA sufficiently justified its decision to procure Digital Equipment Corporation Rainbow 100 (Rainbow 100) personal computers on a brand name only basis. Our decision stated the general rule that an agency should limit acceptable offers to a specific brand name only where that brand name is the only one which will satisfy the agency's minimum needs. We also noted that in reviewing protests against brand name only purchase descriptions, the standard we apply is whether the agency's decision that only the specific product will meet its needs is reasonable. We found that the SBA's decision to limit offers to the Rainbow 100 computers was reasonable because (1) the SBA needed a computer that was compatible with the Sperry Uniscope terminal and SBA's own DATA Communications System, technical requirements and custom written programs; (2) it could insure that the equipment met its needs only by stringent testing; (3) the Rainbow 100 was the only computer fully tested and found to be compatible with the SBA's needs; (4) as evidenced by an Office of Management and Budget memorandum, the computers were urgently needed to perform a primary SBA function; and (5) the SBA did not have time or money to test other equipment.

Wang argues that the agency's lack of time and money to test other equipment is not a sufficient justification to specify Rainbow 100 computers because this justification does not demonstrate that the SBA's needs would only be met by the Rainbow 100. Wang cites our decisions 39 Comp. Gen. 101 (1959), and Omni Spectra, Inc., B-182202, Dec. 13, 1974, 74-2 C.P.D. ¶ 341, to support its position.

In 39 Comp. Gen. 101, supra, the Army Corps of Engineers was procuring snowplows for the Air Force pursuant to a specification which required the chassis and plow units be manufactured by specific companies. The Air Force had determined, based on prior use, that this equipment would meet its needs. We found the specification restrictive because the Air Force had not determined no other product could meet its needs and, in fact, conceded that the protester's product probably would meet its needs. We also found that the difficulty of testing other equipment was not a valid reason to specify a brand name because there was no determination that other brands were not substantially equal in overall performance. In reaching our conclusion, we

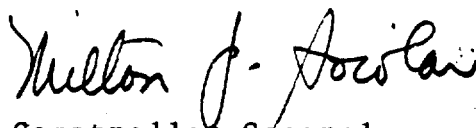
found that an agency must have some basis for concluding a regularly available competitive product would not equally meet its requirements.

In Omni Spectra, Inc., B-182202, supra, the Army specified a brand name for microwave intruder detectors. We found the Army's justification that the specified product had proven reliable when tested under field conditions insufficient. We stated that the agency must demonstrate that the specified product has a particular feature essential to the government's need and that a product lacking this feature would not meet the government's needs. We concluded that the specification was restrictive because the Army had not alleged nor proven that the specified product possessed an essential feature which other products lacked.

In the cases cited by Wang, neither agency stated what its needs were and why the specified equipment met those needs. Rather, the agencies relied solely on the fact that they had previous experience using the specified equipment and did not test other supplier's equipment.

Here, the SBA has specified what its requirements are and why only the Rainbow 100 computers meet those requirements. In this regard, we note that at the time the solicitation was issued, the SBA was in the process of testing the computers of other manufacturers, including the computer offered by Wang, and only the Rainbow 100 had passed all the tests. The agency then issued the solicitation to meet its present needs while it continued to test other equipment. Thus, the agency had a reasonable basis at the time the solicitation was issued to conclude that only the Rainbow 100 met its needs. Wang has not proven that the SBA's conclusion was unreasonable or that our prior decision was legally incorrect.

Consequently, our prior decision is affirmed.

*for*   
Comptroller General  
of the United States